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Board of Appeals Case No. S-2836
(OZAH Case No. 12-25)

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition No. S-2836, filed on February 17, 2012, by Yangjing Lin and Xueqin Xu, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the cellar¹ of an existing single-family home located at 2215 Aventurine Way, in Silver Spring, Maryland, on land in the R-200 Zone. The property's legal description is Lot 15, Block D of the Snowden's Mill Subdivision of Silver Spring. The tax account number is 05-03447050.

The Hearing was scheduled for June 7, 2012, by notice dated March 14, 2012 (Exhibit 11). Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued May 23, 2012, recommended approval of the special exception, with conditions. Exhibit 12.²

The Department of Housing and Community Affairs (DHCA) inspected the property on May 17, 2012. Housing Code Inspector Julia Thom reported her findings in a memorandum dated May 23, 2012 (Exhibit 13). Ms. Thom determined that the accessory apartment has 594 square feet of habitable space, and occupancy will be limited to two unrelated persons or a family of up to three. Also submitted was a memorandum dated May 23, 2012, from Ada DeJesus of DHCA, indicating that there is one other accessory apartment in the area, at 2201 Blue Valley Drive. Exhibit 13(b).

A public hearing was convened on June 7, 2012, as scheduled, and Petitioner Yangjing Lin appeared *pro se*. Also testifying was Inspector Julia Thom of the Department of Housing and Community Affairs. Petitioner Lin executed an affidavit of posting (Exhibit 15) and submitted a copy of his deed (Exhibit 16). He adopted the findings in the Technical Staff Report (Exhibit 12) and in the Housing Code Inspector's Report (Exhibit 13), as Petitioners' own evidence. Tr. 6. He also

¹ Technical Staff referred to the location as the basement of the home (Exhibit 12, p. 1), but the Housing Code Inspector referred to it as the cellar. Exhibit 13.

² The Technical Staff report is frequently quoted and paraphrased herein.

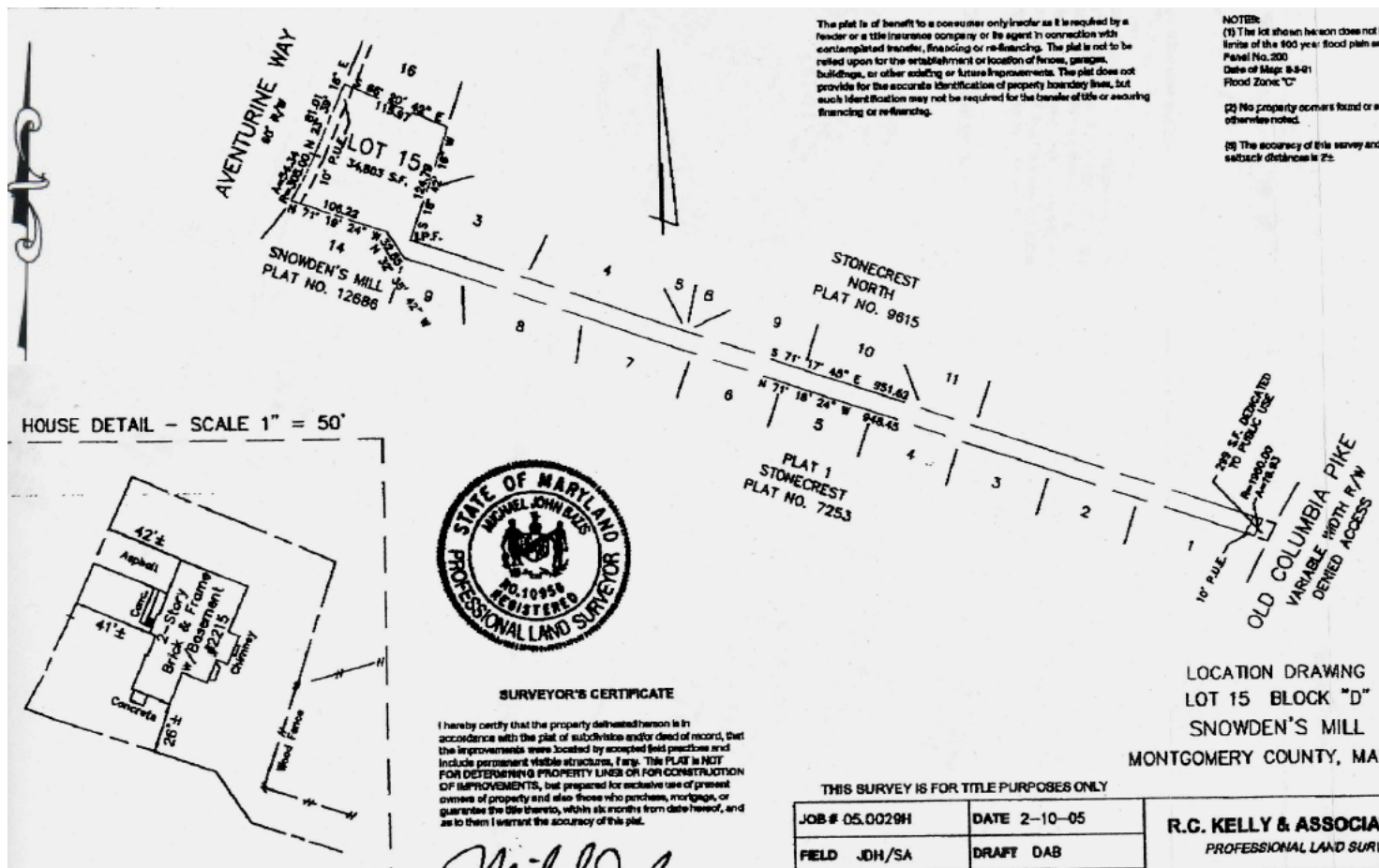
agreed to meet all the conditions set forth in both reports. Tr. 6.

The record was held open till June 14, 2012, to await the filing of the transcript. There is no opposition to this special exception petition, and the petition meets all of the statutory criteria. The Hearing Examiner therefore recommends that the petition be granted, with conditions specified in Part V of this report.

II. FACTUAL BACKGROUND

A. The Subject Property and the Neighborhood

The subject property is located at 2215 Aventurine Way, in Silver Spring, Maryland, in the Snowden's Mill Subdivision. It is on the east side of Aventurine Way, about 200 feet south of the intersection of Aventurine Way and Blue Valley Drive. The home is in the R-200 Zone, on a 34,803 square-foot lot, as is depicted in the site plan (Exhibit 4(a)).



Technical Staff described the property as follows (Exhibit 12, p. 2):

...The Property ... is a square shaped lot with a long pipe stem ... that begins at the back of the lot and continues parallel with Blue Valley Drive and ends at Old Columbia Pike. The Property ... consists of one single-family home with a two car garage and a basement of 1,156 square feet. Existing landscaping is well-maintained.

The “pipe stem” can be clearly seen on the aerial photograph supplied by Staff (Exhibit 12, p. 3):



According to Petitioner Lin, the “pipe stem” is no longer used to access Old Columbia Pike.

Access now is directly onto Aventurine Way. Tr. 10-11. In addition to the two-car garage, the property has a paved driveway that can accommodate four vehicles, as stated in the Housing Code Inspector’s report (Exhibit 13). The home can be seen in the following photographs from the Technical Staff report (Exhibit 12, Attachment “B”):

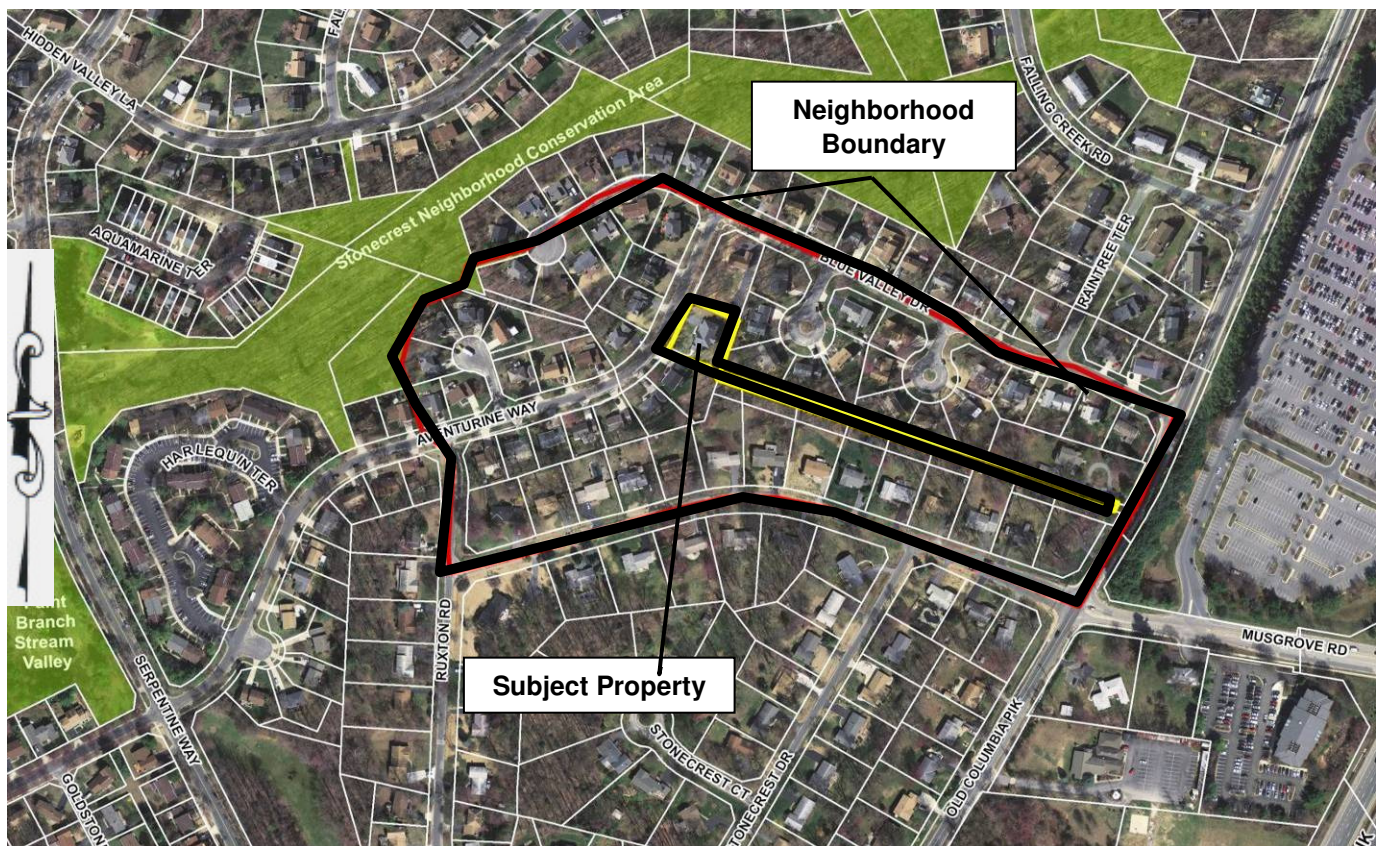


Views of the Home from Aventurine Way



Sidewalk to Accessory Apartment Entrance

Technical Staff defined the general neighborhood as bounded by Blue Valley Drive to the north, Stonecrest Neighborhood Conservation Park to the west, Musgrove Road to the south, and Old Columbia Pike to the east. Exhibit 12, p. 3. The neighborhood boundary is drawn to include nearby properties that may be affected by a potential increase in density or traffic. The Hearing Examiner accepts this neighborhood definition, and it is shown below in a map supplied by Technical Staff (Exhibit 12, p. 3).



Staff notes that all uses in the neighborhood are single-family detached homes. The neighborhood is zoned R-200 and R-90. Although Technical Staff indicates that there are no other accessory apartment special exceptions that exist within the neighborhood boundaries (Exhibit 12, p. 3), DHCA reports that there is one other accessory apartment in the area, at 2201 Blue Valley Drive. Exhibit 13(b). This difference is irrelevant, since the existence of one other accessory apartment would not constitute an excessive concentration of similar uses.

B. The Proposed Use

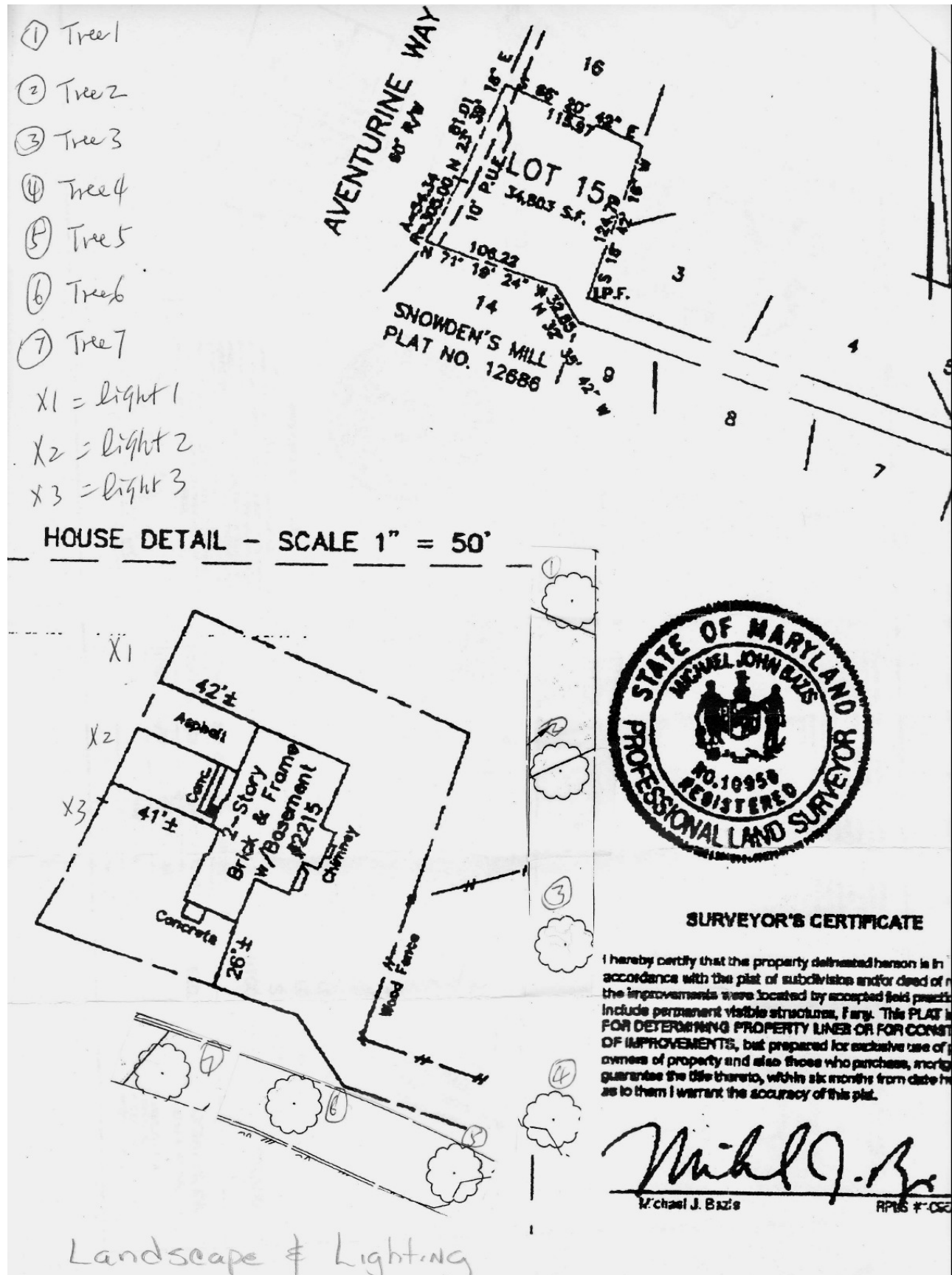
The Petitioners are seeking a special exception to allow a 1,156 square-foot accessory apartment in the basement of their existing home. A separate entrance to the apartment is located on the south of the house and is distinct from the entrance to the main dwelling, as depicted in the following photograph from the Staff report (Exhibit 12, Attachment B):



Technical Staff reports that the proposed use has the appearance of an entry into a basement and should not detract from the appearance of the neighborhood. No new lighting is proposed. An existing flood light is located above the door to the proposed accessory apartment entrance, and landscape lights flank the sidewalk near the entrance only. Staff found, “The existing lighting is adequate and is non-intrusive as the light is contained to the Property.” Exhibit 12, p. 12. A concrete walk leads to the accessory apartment entrance, as depicted on page 4 of this report and above.

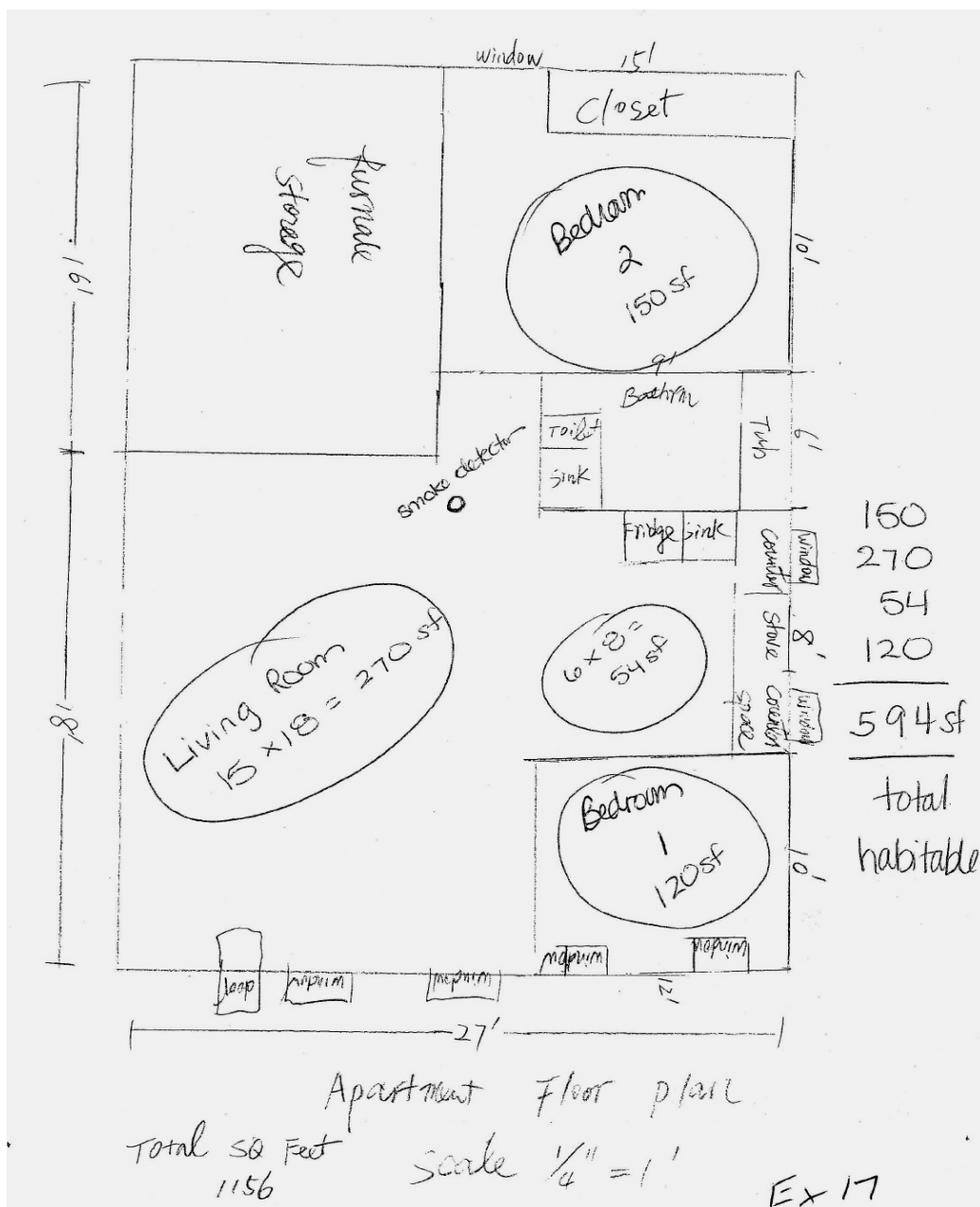
Petitioners have provided a Landscape and Lighting Plan (Exhibit 6), which is reproduced

below. It shows the location of existing landscaping, vegetation and lighting on the site.



No new plantings or other external changes are proposed with the application. Tr. 9. Technical Staff found that "The plan falls within the standards for a single-family home. The Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code does not apply to the special exception. No forest conservation issues are associated with the site." Exhibit 12, p. 5.

The overall net floor area of the apartment is approximately 1,156 square feet, 594 square feet of which is habitable, and it includes a living room, two bedrooms, a kitchen area and a bathroom, as shown on the labeled Floor Plan (Exhibit 17), reproduced below.



The Department of Housing and Community Affairs (DHCA) inspected the property on May 17, 2012, and Housing Code Inspector Julia Thom reported her findings in a memorandum dated May 23, 2012 (Exhibit 13). The substance of her report is set forth below:

The preliminary inspection was conducted on May 17, 2011. The accessory apartment is located in the cellar of the house. The issues regarding accessory apartment standards are as follows:

1. There is one accessory apartment in the surrounding area.
2. The unit is located on a lot consisting of 34,803 square feet.
3. The unit consists of two bedrooms, one bathroom, and a kitchen/living area. The bedrooms are 120 square feet and 150 square feet. The living room is 270 square feet. The kitchen is 54 square feet. The unit is a total of 594 square feet of habitable space.
4. The unit will accommodate 2 unrelated people or a family of 3 based on square footage code requirements.
5. The unit has off street parking consisting of a paved driveway that will accommodate four vehicles if parked side by side. There is also street parking in front of the house.
6. The house has a sprinkler system and working smoke detectors.

Ms. Thom testified that, based on her inspection, there is no objection to the special exception being approved. Tr. 19. She also supplied photographs from inside the apartment. Shown below are the living room (Exhibit 18(c)) and the kitchen area (Exhibit 18(e)):



Technical Staff discussed transportation issues at page 5 of their report (Exhibit 12), stating:

The proposed accessory apartment meets the transportation related requirements of the Adequate Public Facilities (APF) Ordinance. The LATR guidelines require a traffic study to be performed if the applicants' action generates 30 or more peak-hour trips. The proposed accessory apartment is expected to generate a de minimus number of peak-hour trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods, far below the 30-trip threshold. Therefore, no traffic study is required to satisfy the LATR and Policy Area Mobility Review (PAMR) test. This minimal amount of traffic increase can be accommodated by the existing road network. Furthermore, the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic as the use will not generate a substantial increase in either form of traffic.

The existing driveway from Aventurine Way leads to a two car garage used by residents of the house. Aventurine Way will accommodate two additional vehicles for the accessory apartment. On-street parking is used by neighboring residents along Aventurine Way.

The Housing Code Inspector reported that four cars can be accommodated on Petitioners' driveway, and confirmed Petitioner Lin's testimony (Tr. 17) that there is ample on-street parking available on Aventurine Way. Tr. 19. The following photograph of Aventurine Way taken by Technical Staff supports this testimony (Exhibit 12, Attachment B):



Given this evidence, the Hearing Examiner finds that the proposed accessory apartment will not unduly burden local transportation facilities and that there is adequate parking to accommodate both the owners and the accessory apartment tenants.

Based on this record, the Hearing Examiner finds that the proposed special exception will not cause non-inherent adverse effects on the neighborhood warranting denial of the petition.

C. Neighborhood Response

There has been no response from the community, either positive or negative to the subject petition. There is no opposition in the case.

D. The Master Plan

The property is located in the Stonecrest/Snowden's Mill community area as shown on page 33 of the 1997 Fairland Master Plan, approved and adopted in 1997. As stated by Technical Staff, "The Master Plan provides overarching recommendations for the general vicinity of the Property, but does not specifically address this particular Property." Exhibit 12, pp. 4-5. The Master Plan in general sets a goal of maintaining "a wide choice of housing types" (p. 18) and recommends "maximiz[ing] the percentage of single-family detached units in the developable areas" (p. 28). Moreover, because Petitioners plan no external modifications to the subject property and because there is sufficient parking to accommodate the proposed use, the requested special exception will maintain the residential character of the area.

Technical Staff observed that the Master Plan recommends that the subject site and neighboring properties be retained in the existing R-200 Zone. That Zone permits accessory apartments by special exception. Thus, it is fair to say that the planned use, an accessory apartment in a single-family detached home, is not inconsistent with the applicable Master Plan.

III. SUMMARY OF HEARING

At the hearing, testimony was heard from Petitioner Lin, and from Housing Code Inspector

Julia Thom. There was no opposition.

Petitioner Yangjing Lin (Tr. 5-17; 20):

Petitioner Yangjing Lin executed an affidavit of posting (Exhibit 15), and submitted a copy of Petitioners' deed (Exhibit 16). He adopted the findings in the Technical Staff Report (Exhibit 12) and in the Housing Code Inspector's Report (Exhibit 13), as Petitioners' own evidence. Tr. 6. He also agreed to meet all the conditions set forth in both reports. Tr. 6.

Petitioner Lin testified that there would be no new lighting added or other external changes to the subject site, and that the external lighting is residential in nature. Tr. 9-10.

Mr. Lin also stated that although there is room for parking on his driveway, he prefers for the tenant to park on Aventurine Way, where there is always ample parking available. Tr. 17, 20.

Petitioner Lin identified Petitioners' plans and photographs, as well as those in the Staff report. Tr. 10-17.

Housing Code Inspector Julia Thom (Tr. 17-22):

Housing Code Inspector, Julia Thom, testified that she inspected the premises on May 17, 2012, and that her findings are set forth in her report of May 23, 2012 (Exhibit 13). She summarized her findings, and stated that there is no reason to deny the special exception. Ms. Thom found that the apartment has 594 square feet of total habitable space, and that occupancy must be limited to two unrelated persons or a family of up to three persons. Tr. 17-19.

According to Ms. Thom, there is ample on-street parking available on Aventurine Way, in addition to the off-street parking available in Petitioners' garage and driveway. Tr. 19. Ms. Thom produced a copy of Petitioners' Floor Plan with labels designating the rooms, which was admitted as Exhibit 17, and she identified photos she took of the inside and outside of the premises (Exhibit 18). Tr. 19-22.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 12).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 12, p. 6):

- 1) the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
- (2) the provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
- (3) a separate entrance and walkway and sufficient exterior lighting;
- (4) sufficient parking;
- (5) the existence of an another household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
- (6) the potential for additional noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found (Exhibit 12, pp. 6-7):

In this case, there are no non-inherent, adverse effects that will negatively impact

the community above and beyond those necessarily inherent to an accessory apartment. The apartment will be located in the basement of the main dwelling and is non-identifiable from the street. The apartment is set up to provide all the spaces and facilities necessary for an apartment use.

The accessory unit has a separate entrance apart from the main dwelling. The apartment entrance is typical of a side-entry to a single-family basement, making it difficult to distinguish from any other neighborhood home. The walkway and grounds of the accessory apartment will be safe and illuminated, consistent with typical residential standards.

Based on these findings, Staff concluded (Exhibit 12, p. 7):

[T]he operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristics of an accessory apartment use.

The Hearing Examiner agrees with Staff's assessment. Considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there would be no non-inherent adverse effects from the proposed use.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the Housing Code Inspector's report, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) -*A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

(1) Is a permissible special exception in the zone.

Conclusion: An accessory apartment is a permissible special exception in the R-200 Zone, pursuant to Code § 59-C-1.31(a).

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies

with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part IV. C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Fairland Master Plan*, approved and adopted in 1997. As discussed in Part II. D. of this report, the Master Plan in general sets a goal of maintaining “a wide choice of housing types” (p. 18) and recommends “maximiz[ing] the percentage of single-family detached units in the developable areas” (p. 28). Technical Staff reports that the subject property was not recommended for any changes by the Master Plan, which reconfirmed the R-200 zoning for the subject site. That Zone permits accessory apartments by special exception. Hence, Staff concluded that the subject application is consistent with the Master Plan's recommendations. Exhibit 12, pp. 4-5. The Hearing Examiner agrees and so finds.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The accessory apartment is located in an existing dwelling and will not require any external changes. It therefore will maintain its residential character. There is sufficient off-street and on-street parking to accommodate both the owners and the tenants. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. There is one other accessory apartment in the defined neighborhood, but the addition of this use will not affect the area adversely. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that “Based on the nature of the use, the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity. No new lights are proposed at the site.” Exhibit 12, p. 8. The Hearing Examiner finds that because the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: According to Technical Staff, there are no other accessory apartments in the neighborhood. Exhibit 12, p. 8. Although DHCA reports that there is one other accessory apartment in the area (Exhibits 13 and 13(b)), the Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 12, p. 9), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of*

the special exception.

- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision, and there is no currently valid determination of the adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the proposed accessory apartment use would add “a de minimus number of peak-hour trips” during each of the peak-hour weekday periods. Exhibit 12, p. 5. Since the existing house, combined with the proposed accessory apartment, would generate fewer than 30 total trips in the weekday morning and evening peak hours, the requirements of the LATR are satisfied without a traffic study. Since the proposed use is estimated to generate only one additional peak-hour trip, PAMR is also satisfied. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that the proposed use "will not reduce the safety of vehicular or pedestrian traffic" the Hearing Examiner so finds. Exhibit 12, p. 9.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

Sec. 59-G-2.00. Accessory apartment.

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:

(a) Dwelling unit requirements:

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

Conclusion: Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*

- (i) The lot is 2 acres or more in size; and*
- (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

Conclusion: The apartment is located in the cellar of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

(3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment is located in an existing dwelling.

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

Conclusion: The subject house was built in 2004. Exhibit 14 and Exhibit 12, p. 13. It therefore meets the “5 year old” requirement.

(5) The accessory apartment must not be located on a lot:

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use will not violate any of the provisions of this subsection.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

Conclusion: Access to the accessory apartment will preserve the appearance of a one-family dwelling. The apartment entrance is separate from the main entrance and has the appearance of a typical side entry to a one-family home. Exhibit 12, p. 7. There will thus be no change to the home’s residential appearance.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

Conclusion: No external modifications or improvements are proposed by Petitioners. Tr. 9-10.

- (8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

- (9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The accessory apartment, at 1,156 square feet, 594 square feet of which is habitable, is under the maximum of 1,200 square feet. It will also clearly be subordinate to the main dwelling, which according to Technical Staff, has a total floor area of 4,003 square feet. Exhibit 12, p. 14.

59-G § 2.00(b) Ownership Requirements

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioners will live in the main dwelling unit on the property.

- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to Petitioners' deed (Exhibit 16), Petitioners purchased the property in March of 2005. The one-year rule has therefore been satisfied.

- (3) Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioners are the owners of the property. Exhibit 16.

(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.

Conclusion: Not applicable.

59-G § 2.00(c) Land Use Requirements

(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

Conclusion: The subject lot is approximately 34,803 square feet in size, and therefore satisfies this requirement. According to Technical Staff, the subject property conforms to all applicable development standards of the zone, as summarized in the following table (Exhibit 12, p. 10):

R-200 Development Standards	Required/ Permitted	Proposed	Zoning Ordinance
Minimum net lot area	20,000 sq. ft.	34,803 sq. ft.	§59-C-1.322(a)
Minimum lot width:			
- Along front building line	100 feet	130 feet	§59-C-1.322(b)
- Along front street line	25 feet	135 feet	
Yard requirements for a main building:			
Minimum setback	40 feet	41 feet	§59-C-1.323(a)
Minimum side yard			
- One side	12 feet	±30 ft. north side; 26 ft. south side	§59-C-1.323(b)(1)
- Sum of both sides	25 feet	56 feet	§59-C-1.323(b)(1)
- Abutting a public street	40 feet	40 feet	§59-C-1.323(a)
Minimum rear yard	30 feet	±35 feet	§59-C-1.323(b)(2)
Maximum building:			
- Height	50 feet	<35 feet	§59-C-1.327
- Coverage of lot	25%	11%	§59-C-1.328
- Coverage of front yard	30%	19%	§59-C-1.328
Maximum floor area for accessory apt.	1,200 sq. ft.	1,156 sq. ft.	§59-G-2.00(a)(9)

- (2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As previously stated in this report, there is, at most, one other approved and existing accessory apartment in the neighborhood. The Hearing Examiner finds that the proposed special exception will not create an excessive concentration of similar uses.

- (3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*
- (i) More spaces are required to supplement on-street parking; or*
 - (ii) Adequate on-street parking permits fewer off-street spaces.*
- Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: As discussed in Part II.B. of this report, Petitioners have a two-car garage, and there are four off-street spaces on Petitioners' driveway. Moreover, there is ample on-street parking available on Aventurine Way. The Hearing Examiner finds that this provision has been satisfied.

D. Additional Applicable Standards

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspector's report (Exhibit 13) specifies certain conditions. Petitioners have agreed to meet all conditions, and will comply with directives of the Housing Code Inspector. Tr. 6.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that the Petition of Yangjing Lin and Xueqin Xu, BOA No. S-2836, which seeks a special exception for an accessory apartment located at 2215 Aventurine Way, in Silver Spring, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;
2. The Petitioners must comply with the conditions set forth in the Memorandum of Julia Thom, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
 - a. There is one accessory apartment in the surrounding area.
 - b. The unit is located on a lot consisting of 34,803 square feet.
 - c. The unit consists of two bedrooms, one bathroom, and a kitchen/living area. The bedrooms are 120 square feet and 150 square feet. The living room is 270 square feet. The kitchen is 54 square feet. The unit is a total of 594 square feet of habitable space.
 - d. The unit will accommodate 2 unrelated people or a family of 3 based on square footage code requirements.
 - e. The unit has off street parking consisting of a paved driveway that will accommodate four vehicles if parked side by side. There is also street parking in front of the house.
 - f. The house has a sprinkler system and working smoke detectors.
3. Petitioners must comply with the determination of the Housing Code Inspectors as to limits on occupancy in the accessory apartment (up to two unrelated persons or a family of up to three) and must comply with any other directions of the Housing Code Inspectors to ensure safe and code-compliant occupancy;
4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit; and
6. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the

special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: June 18, 2012

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Martin L. Grossman".

Martin L. Grossman
Hearing Examiner